

IN THE COURT OF CRIMINAL APPEALS OF TENNESSEE

AT KNOXVILLE

DECEMBER 1993 SESSION

FILED

October 13, 1995

Cecil Crowson, Jr.
Appellate Court Clerk

STATE OF TENNESSEE,)

Appellant,)

VS.)

LAVERNE JEROME PARMAN,)
IVA A. LYTTLE, and)
CLARENCE POINTER,)

Appellees.)

C.C.A. NO. 03C01-9306-CR-00188

ANDERSON COUNTY

HON. JAMES B. SCOTT, JR. ,
JUDGE

(On Remand from the Supreme Court)

FOR THE APPELLANT:

FOR THE APPELLEE:

CHARLES W. BURSON
Attorney General & Reporter

GARY GROOVER
121 Leinart St.
Clinton, TN 37716

MERRILYN FEIRMAN
Attorney for the State
450 James Robertson Pkwy.
Nashville, TN 37243-0493

JAMES N. RAMSEY
District Attorney General

JAN HICKS
Asst. District Attorney General
100 North Main St.
Clinton, TN 37716

OPINION FILED: _____

TRIAL COURT AFFIRMED

JOHN H. PEAY,
Judge

OPINION

By an order filed September 5, 1995, our Supreme Court remanded this matter to this Court for reconsideration in light of its recent holding in State v. Walker, ___ S.W.2d ___ (Tenn. 1995).

In Walker, each of two defendants had been sentenced to eleven months twenty-nine days following a conviction of driving under the influence. Each defendant had reported to the appropriate jail, but was turned away because of overcrowding. After more than 364 days passed, each defendant had been told to report to jail. Each defendant then filed a petition for post-conviction relief. The circuit court denied relief, and this Court affirmed. Upon appeal, our Supreme Court reversed, holding that "where persons under a criminal sentence immediately present themselves to the appropriate authorities for incarceration and are turned away, the sentence in each case shall begin to run when the judgment of conviction becomes final or the prisoner is actually incarcerated whichever is earlier." Walker, ___ S.W.2d at ___.

As did the defendants in Walker, defendants Pointer, Parman and Lyttle each received eleven months twenty-nine days sentences for his or her conviction of driving under the influence. Like the defendants in Walker, each of the defendants in this case reported to the local jail to serve his or her sentence but was turned away by the jailer because of overcrowded conditions. Following a lapse of time greater than the length of his or her sentence, each defendant filed a motion seeking to have his or her sentence declared void and unenforceable.

Our review reveals that the records in these cases are incomplete. There are no judgment forms included for two of the defendants and there is no transcript of a hearing on this matter. For this reason, it is somewhat difficult to determine the exact date that each judgment became final as required by Walker. In the absence of an

adequate record, this Court must presume that the trial court's ruling was supported by the evidence. State v. Bibbs, 806 S.W.2d 786, 790 (Tenn. Crim. App. 1991).

Based on the sparse record, it appears that these cases fall squarely within the rule set forth in Walker. For these reasons, we now affirm the original holding of the trial court.

We note that the legislature has now enacted legislation that will alter this result in future cases. See T.C.A. § 55-10-403, as amended by Public Chapter 524 (1995). This amendment will require defendants in similar circumstances to serve their sentences in "alternative facilities." However, the statute, as amended, applies only to sentences pronounced on or after July 1, 1995. Thus, it is not applicable to the defendants in this case.

Accordingly, we find that each of the defendants' sentences has expired, and so vacate our earlier order in this matter and affirm the action of the trial court.

JOHN H. PEAY, Judge

CONCUR:

JOE B. JONES, Judge

GARY R. WADE, Judge